84-1012 (i)

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In the
Supreme Court of the United States

OCTOBER TERM, 1984

NO. _____

**EUGENE HANEY, ADMINISTRATOR
OF THE ESTATE OF
FREDDIE LEE MAYES,** **Petitioner,**

v.

**CITY OF LOUISVILLE, KENTUCKY
LOUISVILLE DIVISION OF POLICE
OFFICER GERALD KALBFLEISCH
OFFICER DALE LANKFORD
OFFICER EVERETT PIKE
SERGEANT GENE WALDRIDGE** **Respondents.**

PETITION FOR WRIT OF CERTIORARI TO THE KENTUCKY SUPREME COURT

**HEIDEMAN LAW OFFICES
The Legal Arts Building
Suite 600
200 South Seventh Street
Louisville, KY 40202
(502) 585-1155**

By: _____
**RICHARD D. HEIDEMAN
COUNSEL FOR PETITIONER**

By: _____
**A. THOMAS JOHNSON
COUNSEL FOR PETITIONER**

31 pp

QUESTION PRESENTED FOR REVIEW

I. Whether the United States Constitution Amendments 4, 5, 6, and 14 prohibit the use of deadly force or physical force liable to cause great physical injury by police officers acting under color of state law on a mentally ill person in order to effect his arrest for hospitalization pursuant to a mental detention warrant.

THE NAMES OF ALL PARTIES TO THE PROCEEDINGS ARE LISTED IN THE CAPTION OF THIS CASE IN THIS COURT. THUS, THEY DO NOT NEED TO BE SET FORTH HERE.

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CONSTITUTIONAL PROVISIONS AND STATUTES

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OPINIONS BELOW

The Memorandum Order of the Kentucky Supreme Court denying Haney's Motion for Discretionary Review is attached hereto as Exhibit "A" in the Appendix. The opinion of the Kentucky Court of Appeals affirming the judgment of the trial court is attached hereto as Exhibit "B" in the Appendix. The judgment of the trial court is attached hereto as Exhibit "C" in the Appendix.

JURISDICTION

The jurisdiction of this court is invoked under Title 28 USC Section 1257 (3). An important question of Constitutional rights under the 14th, 5th, 6th and 4th Amendments to the United States Constitution is involved. No relief as to it was accorded by the state courts.

The Memorandum Order of the Kentucky Supreme Court was entered September 26, 1984. No Motion for rehearing or extension of time to petition for Certiorari is pending. This petition for Certiorari is being filed within (90) ninety days of the Kentucky Supreme Courts' denial of the Motion for Discretionary Review. Thus the petition is timely filed under 28 USC Section 2101 (C).

The opinion of the Kentucky Court of Appeals was rendered April 20, 1984 at 10:00 a.m.

The Judgment of the trial court was entered December 16, 1981.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS CASE

The constitutional provisions involved in this case are the 14th Amendment §1 to the United States Constitution:

§1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The 4th Amendment to the United States Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The 5th Amendment to the United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The 6th Amendment to the United States Constitution:

In all criminal prosecutions, the accused shall

enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

KRS 202A.301 (in KRS Chapter 202A: Hospitalization of the Mentally Ill):

Exemption from personal liability: Persons carrying out duties or rendering professional opinions as provided in this chapter shall be free of personal liability for such actions, provided that such activities are performed in good faith within the scope of their professional duties and in a manner consistent with accepted professional practices (formerly codified as KRS 202A.200).

KRS 70.079: It shall not be a sufficient return of any process, that the officer was prevented by force from executing it.

KRS 431.025(3): No unnecessary force or violence shall be used in making an arrest.

STATEMENT OF THE CASE

The Kentucky Court of Appeals in its Opinion stated that "the story behind the case is a tragedy." That it is and it is precisely to prevent such a tragedy from recurring that the petitioner has exhausted every appellate remedy known to him. The case was originally brought as a wrongful death case in 1978.

The simplest statement of the tragic material facts, which

are almost wholly uncontested, is set forth here, verbatim, from our appellate briefs in the state courts. The numerous citations to the record are excised for the sake of making this statement concise for purposes of this petition.

On October 8, 1977, Sharon Bradley, the sister of Freddie Lee Mayes, and Georgia M. Smith, Freddie Mayes's mother, authorized the taking of a mental detention warrant on Freddie Lee Mayes. The warrant was taken pursuant to state law, KRS Chapter 202A. (See copy of warrant in Appendix as Exhibit "D". The warrant has attached to it a stipulation entered into by the parties in the trial court admitting the authenticity of the warrant and other matters set forth therein.) Mayes was to be transported to Louisville General Hospital or to River Region, as the front of the warrant indicates, for observation for mental illness. River Region was a Social Services Agency existing during this time which treated patients for mental illnesses.

The Louisville Division of Police received the warrant and in due course proceeded to execute it on October 9, 1977.

At 4:01 p.m. on October 9, 1977 three (3) police vehicles from the Louisville Police Department arrived in front of the residence of Freddie Lee Mayes at 1255 Euclid, Louisville, Kentucky. Officers Gerald Kalbfleisch, Dale Lankford, Everett Pike, Gene Waldridge and Mitchell Nobles were the Louisville police officers in these vehicles. All are the officers respondents mentioned herein with the exception of Nobles who was dismissed by an appellate court for procedural reasons.

These officers saw and confronted Mayes as a group in a semicircle in his back yard less than a minute after their arrival. Mayes was a large man, weighing about 350 pounds and over six feet tall. Mayes was completely unarmed. All five (5) officers were in full uniform and armed. At this time, Officer Pike told Mayes that they had a warrant to take him to General Hospital and that if the doctors would release him that they would bring

him back. They also said to Mayes that he appeared to be normal to them but that it was his (Mayes's) duty to accompany them to the hospital as it was theirs to take him there.

After a few minutes, Mayes walked away from them and into his house. All five (5) officers followed Mayes into his house some entering through the front door and others through the rear door. Once inside, the officers told Mayes the same things they had told him minutes before while in his backyard. Mayes at no time said he would go to the hospital. Mayes at this time "did not appear right" and appeared "sick."

After perhaps a few minutes more Officer Pike who had been chosen as the lead officer because of his experience in serving such warrants, grabbed Mayes while Mayes was in his own living room surrounded by the five (5) officers; this was before Mayes had physically resisted or laid hands on any person or anything. All five (5) officers were standing around Mayes at this time in Mayes's living room. At the instant of Mayes's resistance Officer Kalbfleisch struck him on the head with "moderate force" with his nightstick.

At this point a struggle ensued between the five (5) officers and Freddie Lee Mayes as the officers attempted to put handcuffs on Mayes. The officers succeeded in wrestling Mayes into a chair. The struggle lasted less than one minute.

The struggle ended when Officer Kalbfleisch applied a choke hold to the neck of Freddie Mayes using his nightstick to restrain Freddie Mayes in the chair while standing behind Mayes. Officer Lankford helped Kalbfleisch apply this force by shoving the nightstick against the underside of Mayes's chin and neck. This force was applied to the chin and neck area of Mayes for about three (3) minutes according to Officer Kalbfleisch.

It was at the end of this three (3) minute choke-hold that Freddie Mayes stopped struggling. This was within eleven (11)

minutes of these police officers' arrival at the front of Mayes's house. It was then that Officer Kalbfleisch first called the Emergency Medical Service. A second call to EMS was made shortly thereafter to have them make the run as an emergency.

The first call to EMS was made at 4:12 p.m. according to EMS technician Stuart Crawford. EMS arrived at 4:18 p.m. and found no vital signs. An emergency run was made to Louisville General Hospital. Mayes never regained consciousness; he was pronounced dead at Louisville General Hospital at 5:01 p.m.

The autopsy performed on Freddie Lee Mayes showed that he died by aspirating his own gastric contents. This diagnosis was made by Dr. George Nichols, a Louisville Forensic Pathologist.

The jury in the trial in Jefferson Circuit Court in Louisville, Kentucky returned a verdict for the Respondents. The verdict form had required the jury to name which officer caused the death of Mayes. The trial court had refused to grant the Petitioner's motion to dismiss all officers in their individual capacity but retain them in their official capacity. Judgment (Exhibit C) followed.

On appeal to the Kentucky Court of Appeals the federal question involved herein appeared at page seventeen (17) of the Respondent's brief (Exhibit E). The question arose within the context of the instructions given by the trial court to the jury. The Petitioner had tendered instructions patterned upon KRS 202A.301 which embodies and embraces valid Constitutional rights, privileges and guarantees by recognizing what is accepted professional practice in the case of a mental detention warrant "arrest" of a sick person. The Kentucky Court of Appeals did not deal with the issue. It was once again raised on a Motion for Discretionary Review to the Kentucky Supreme Court (Exhibit F), which motion was denied on September 26, 1984. Hence the federal question was not addressed by the court there either.

REASONS FOR GRANTING THIS WRIT FOR CERTIORARI

The provisions of the 4th, 5th, 6th and 14th Amendments to the United States Constitution should prohibit the use of deadly force or force liable to cause great physical injury by police officers on a mentally ill person in order to effect his arrest for hospitalization pursuant to a mental detention warrant.

The jury instructions given in this case were erroneous. They are patterned on a standard set in *City of Lexington v. Gray*, Ky, 499 S.W.2d 72 (1973), which should be held inapplicable to this case for due process and equal protection reasons. This was an arrest of a *sick* person, not a criminal. He was to be taken to the hospital or doctor for help; not to a jail as was the subject in *Gray*. Yet the trial court refused to distinguish between the arrest of a criminal and an "arrest" incident to serving a mental detention warrant. After instructing the jury that it was the officers' duty to place the decedent under arrest, the instructions went on to say, stating language from *Gray:*

> "In so doing, it was their further duty to use no more force than was necessary or appeared to them in the exercise of reasonable judgment to be necessary in order to effect the arrest."

This authorizes the jury to find that the officers could use any kind of force to effect this *mental detention* warrant so long as it was reasonable or appeared reasonable to the officers. *It would permit (and would lead a jury so to think) the use of deadly force if the officers thought they needed it to effect this arrest.* The appellate court, in affirming, looked to KRS 70.079 and 431.025(3). The Petitioner contends that this broad rule should not apply to the execution of a *mental detention* warrant by five (5) armed police officers on one (1) unarmed man.

Thus the state courts in this case have decided an important federal question, which federal question has not been, but should

be, settled by this Court. That is, the amount of physical force that is Constitutionally permissible for police to use in order to effect an arrest of a person for hospitalization purposes, which person is seeking to escape or resisting the arrest so he will not have to go to the hospital for mental examination/detention. To put it simply, we ask this court to declare that the state *criminal* process statutes should not be applicable to the service of a mental detention warrant.

It stands to reason that if it may be unconstitutional to use deadly force to arrest a nonviolent escaping felon or misdemeanant that the same should be the case where the person is not a criminal at all, but a sick person. See *Palmer v. Hall,* 380 F.Supp. 120 (M.D. Ga, 1974), at 125-126, aff'd 517 F.2d 705 (5th Cir., 1975). See *Landrum v. Moats,* 576 F.2d 1320 (8th Cir., 1978) wherein it was held (within the context of a §1983 case) that each of Amendments 4, 5, 6 and 14 of the United States Constitution could be plausibly construed to forbid the use of deadly force on a fleeing felon who has not used violence in the commission of the felony and who does not appear to be about to cause harm to someone. *Landrum* at 1324. And see *McQurler v. City of Atlanta, Ga.,* 572 F.Supp. 1401 (N.D. Ga., 1983).

Our point is that if the police power of a state is legislatively and "executively" brought to bear upon a person with mental illness, due process and equal protection mandates that that power must be executed differently than in the situation involving an arrest for *a crime* against the state's laws. Freddie Mayes was not a criminal; he was sick. Fundamental fairness demands that different procedures be used under these circumstances and this Court should so declare.

CONCLUSION

For the foregoing reasons the petitioner respectfully requests that a Writ of Certiorari issue to review the action or inaction of the Kentucky Supreme Court and Kentucky Court of Appeals and Jefferson Circuit Court relative to the issues raised herein.

RESPECTFULLY SUBMITTED,

HEIDEMAN LAW OFFICES
The Legal Arts Building
Suite 600
200 South Seventh Street
Louisville, Kentucky 40202
(502) 585-1155

By: _____
RICHARD D. HEIDEMAN
COUNSEL FOR PETITIONER

By: _____
A. THOMAS JOHNSON
COUNSEL FOR PETITIONER

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984
NO. _____

EUGENE HANEY, ADMINISTRATOR
FOR THE ESTATE
OF FREDDIE LEE MAYES, Petitioner,

v.

CITY OF LOUISVILLE, KENTUCKY
LOUISVILLE DIVISION OF POLICE
OFFICER GERALD KALBFLEISCH
OFFICER DALE LANKFORD
OFFICER EVERETT PIKE
SERGEANT GENE WALDRIDGE Respondents.

PROOF OF SERVICE

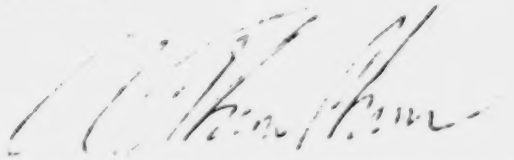
STATE OF KENTUCKY }
COUNTY OF JEFFERSON } SS

RICHARD D. HEIDEMAN, after being duly sworn, deposes and says that pursuant to Rule 28.2 and 28.3 of this Court he served the within and PETITION FOR WRIT OF CERTIORARI TO THE KENTUCKY SUPREME COURT on counsel for the Respondents by enclosing three copies thereof in an envelope, first class postage prepaid, in the United States mail, addressed to and depositing same in the United States mail at Louisville, Kentucky on the 21 day of December, 1984 to George Schuhmann, Attorney at Law and Paul V. Guagliardo, Attorney at Law, Room 200, City Hall, 601 W. Jefferson Street, Louisville, Kentucky 40202; and to Samuel Manly, Attorney at Law, 1025 Kentucky Home Life Building, Louisville, Kentucky 40202. I am a member of the bar of the U.S. Supreme Court.

Richard D. Heideman

STATE OF KENTUCKY
COUNTY OF JEFFERSON } SS

Subscribed and sworn to before me by Richard D. Heideman on this 21 day of December, 1984.



NOTARY PUBLIC

My commission expires: March 12, 1985.

APPENDIX

A. Supreme Court Order Denying Motion for Discretionary Review
B. Court of Appeals Opinion
C. Judgment of Jefferson Circuit Court
D. Warrant and Admission
E. Page 17 of Haney's Brief to the Kentucky Court of Appeals
F. Page 5 of Haney's Motion for Discretionary Review

EXHIBIT A

SUPREME COURT OF KENTUCKY
84-SC-386-D
(82-CA-910-MR)

EUGENE HANEY, ADMINISTRATOR
OF THE ESTATE OF
FREDDIE LEE MAYES — Movant

v.

JEFFERSON CIRCUIT COURT
#78-CI-08262

CITY OF LOUISVILLE, KENTUCKY;
LOUISVILLE DIVISION OF POLICE;
OFFICER GERALD KALBFLEISCH; OFFICER
DALE LANKFORD; OFFICER EVERETT PIKE;
SERGEANT GENE WALDRIDGE — Respondents

ORDER DENYING MOTION
FOR DISCRETIONARY REVIEW

The motion of Eugene Haney, Administrator of the estate of Freddie Lee Mayes for a review of the decision of the Court of Appeals is denied.

ENTERED September 26, 1984.

/s/
ROBERT F. STEPHENS
CHIEF JUSTICE

EXHIBIT B

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 82-CA-910-MR and
CROSS-APPEAL NO. 82-CA-1564-MR

EUGENE HANEY, ADMINISTRATOR
FOR THE ESTATE OF
FREDDIE LEE MAYES — Appellant/ Cross-Appellee

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HON. JACK MUDD, JUDGE
ACTION NO. 78-CI-08262

CITY OF LOUISVILLE, KENTUCKY;
LOUISVILLE DIVISION OF POLICE; OFFICER
GERALD KALBLEISCH; OFFICER DALE
LANKFORD; OFFICER EVERETT PIKE;
SERGEANT GENE WALDRIDGE — Appellees/ Cross-Appellants

AFFIRMING ON APPEAL
AFFIRMING ON CROSS-APPEAL

BEFORE: HOWERTON, MILLER and WHITE, JUDGES.
MILLER, JUDGE. Appellant (plaintiff below) brings this appeal from a judgment entered upon an adverse jury verdict in an action for wrongful death. KRS 411.130. The story behind the case is a tragedy. On October 9, 1977, a number of Louisville police officers set out to serve a mental detention warrant (KRS 202A.050, now repealed) upon appellant's intestate, Freddie Lee Mayes. The warrant had been since the verdict went against the plaintiff. We are going to discuss what we believe to be the relevant contentions of appellant. Appellant asserts error in failing to grant him a judgment N.O.V. CR 50.02. This argument is not open for review since it appears that the trial court was not given the opportunity to rule upon a motion for directed verdict. *See Myers v. City of Louisville*, Ky. App., 590 S.W.2d 348 (1979);

CR 50.01. However, we note that the record presents a classic case for submission to the jury. *See Lee v. Tucker,* Ky., 365 S.W.2d 849 (1963).

Appellant contends that the trial court erred in permitting leading questions upon cross-examination of the police officers whom the appellant had called in chief, but as if on cross-examination. We disagree with the appellant's contention. When a witness is called upon cross-examination, the opposing party may nevertheless cross-examine him by propounding leading questions limited however to the subject matter of his examination in chief. CR 43.05 and 43.06. The record reveals that any abuse of this rule was harmless indeed. *See Hall v. Hamlin,* Ky., 484 S.W.2d 853 (1972); CR 61.01.

Appellant complains of error in the instructions. Appellant cites criminal provisions relevant to the force which may be exercised in effecting an arrest. Kentucky Penal Code, KRS Chapter 503. Although these provisions may be relevant, they are primarily designed to punish for criminal acts which may be perpetrated by authorities in effecting an arrest through the use of excessive force or means. However, we recognize that in civil as well as criminal cases, the rule is one of "reason." Liability may attach when an officer uses more force than is necessary or reasonably appears to him to be necessary. *See City of Lexington v. Gray,* Ky., 499 S.W.2d 72 (1973); *KRS 431.025(3).* We believe the instructions rendered herein were consistent with the *Gray* decision. After instructing the jury that it was the officers duty to place the decedent under arrest, the instructions went on to say:

> In so doing, it was their further duty to use no more force than was necessary or appeared to them in the exercise of reasonable judgment to be necessary, in order to effect the arrest.

While this instruction may have been more appropriately

stated by inserting the word "reasonably" before the word "necessary" each time, we believe it was sufficiently clear to have permitted the jury to properly evaluate the evidence in light of the prevailing law. Although an arresting officer is bound to effect custody of the arrestee pursuant to "reasonable judgment" and with no more force than "reasonably necessary," the officer is duty bound not to have the arrest frustrated by force. A "return" that he was so prevented to effect an arrest is not permitted. KRS 70.079. For this reason, we decline to find error in the instruction.

Appellant's suit named the various police officers in their individual capacity. At the close of all evidence, appellant sought to dismiss his claim against the officers individually. The trial court refused to allow dismissal. We believe the trial court was correct. Such was a matter within the sound discretion of the trial court in assuring a fair trial to all litigants. Appellant should have requested dismissal sooner so as to prevent probable prejudice to the remaining defendants.

Appellant asserts it was improper to permit cross-examination of Sharon Bradley and Georgia Smith (the sister and mother of the deceased) concerning the substance of their affidavit supporting the arrest warrant. We disagree. The "temperament" of the deceased at the time of issuing the warrant, as set forth in the warrant, was extremely relevant in aiding the jury in passing judgment upon the conduct of the police officers, as well as the probable response of the arrestee.

The most serious question raised by appellant on this appeal is the trial court's partial exclusion of expert testimony offered by appellant. The testimony was presented by avowal. CR 43.10. The testimony was that of a professional police officer, Joseph Hess, and Dr. Bruce Danto, a psychiatrist. The witnesses were qualified as trainers and instructors of police officers. Appellees, on their cross-appeal, assert that the entire testimony of Officer Hess and Dr. Danto should have been excluded. In *O'Connor & Raque Co. v. Bill*, Ky., 474 S.W.2d 344, 347 (1971), the court

held that expert opinions can only be used "when the factual situation is so far out of the practical experience of jurors that they are likely to be incapable of forming a correct judgment without expert assistance." While the ultimate decision for the jury is whether police officers used unreasonable force in making the arrest, the methods of the use of a "night-stick," types of restraining holds, such as "choke-holds" and "come-along-holds," as well as the appropriateness and the dangers of each are not altogether common knowledge to the average juror. Similarly, the overall methods and standards of professional police work in handling the mentally ill may not be within the day-to-day experience of the average juror.

Undoubtedly, the officers had to commit plaintiff's intestate, Freddie Lee Mayes, to custody and in doing so they were protected by the presumption that they operated within the scope of authority. However, as stated in *Gray, supra,* at page 74, the test is that "the officer making an arrest may use such force as may be necessary to make the arrest but no more." In determining this force, he is bound by the rule of "reason." The actions of a police officer in the circumstances of this case must be viewed in light of acceptable police practices. Absent a showing that reasonable police practices in Jefferson County differ substantially from the rest of the country, the expert testimony of Officer Hess and Dr. Danto was admissible in its entirety. Opinion evidence is not objectionable because it embraces an ultimate fact. *See Commonwealth, Department of Highways v. Widner*, Ky., 388 S.W.2d 583 (1965); Lawson, *Kentucky Evidence Law Handbook,* § 6.20 (1976). Such would have undoubtedly been of some assistance to the jury in reaching its decision. This, of course, is the basis of all expert testimony.

However, as we view the record, there was voluminous testimony offered by the two experts. Their evidence covered all significant matters with the exception of a detailed expression upon the ultimate issue. In a large sense, the excluded evidence was repetitious and, in fact, a reading of the record reveals this

to have been a chief basis for its exclusion. We feel that the evidence excluded as manifest in the avowal would not, by the remotest expectation, have changed the verdict. Therefore, we conclude that the partial exclusion of the experts' testimony was harmless error. *See Rietze v. Williams*, Ky., 458 S.W.2d 613 (1970); CR 61.01. There was abundant evidence from which the jury could evaluate the duties and failures of the police officers.

The appellees argue on cross-appeal that they were entitled to a directed verdict. Viewing the evidence as a whole, the court did not err in denying the appellees' motion. There was a submissible issue. *See Lee v. Tucker, supra.*

For the foregoing reasons, the decision of the Circuit Court is affirmed on appeal and cross-appeal.

ALL CONCUR.

ATTORNEY FOR APPELLANT/CROSS-APPELLEE:

A. Thomas Johnson
HEIDEMAN LAW OFFICES
300 W. Main Street, Suite 307
Louisville, Kentucky 40202

ATTORNEYS FOR APPELLEES/CROSS-APPELLANTS:

George S. Schuhmann
Paul V. Guagliardo
Room 200, City Hall
601 W. Jefferson Street
Louisville, Kentucky 40202

Samuel Manly
1025 Kentucky Home Life Building
Louisville, Kentucky 40202

EXHIBIT C

JEFFERSON CIRCUIT COURT
DIVISION SIX
NO. 78-CI-08262

EUGENE HANEY, ADMINISTRATOR
OF THE ESTATE OF
FREDDIE LEE MAYES — Plaintiff

vs. JUDGMENT

CITY OF LOUISVILLE, LOUISVILLE DIVISION
OF POLICE, OFFICER GERALD KALBFLEISCH,
OFFICE DALE LANKFORT, OFFICER MITCHELL
NOBLES, OFFICER EVERETT PIKE, AND
SGT. GENE WALDRIDGE — Defendants

This action coming on for trial by jury on October 20, 1981, and the jury having rendered its verdict herein on November 2, 1981 in favor of all named Defendants and the Court being sufficiently advised,

IT IS HEREBY ORDERED and ADJUDGED as follows:

1. The Complaint herein is hereby dismissed with regard to all parties named therein at the Plaintiff's cost and with prejudice, and

2. This is a final and appealable Judgment and there is no just reason for delay.

ENTERED in Court December 16, 1981. Paulie Miller, Clerk.

/s/
JACK E. MUDD, JUDGE

EXHIBIT D

DEFT TO BE TAKEN TO WARD 1
LOU GEN HOSPITAL T/OR
RIVER REGION

IQ	7	3	3	3	1

M Race N
W 350 LOS 202
9/01/43

CHARGED WITH

KRS 202A.050

Commonwealth of Kentucky

VS. WARRANT FOR

MANS

REV FREDDIE [illegible] White Black

1255 EUCLID AVE

LOU KY

Officer will please not write in any of the above blank spaces

BEST AVA

ABLE COPY

n County, Ky. 10-8 1977

M/N
602
35085

Commonwealth
vs.
Fredda L Mayo

1255 Euclid Ave

COMPLAINT
Sheron Bradley
ADDRESS
213 No 36th
ph 776-3363
OFFENSE
KRS 202A050
RECEIVED BY

Officer
Sheriff

WARRANT

THE COMMONWEALTH OF KENTUCKY

To any Peace Officer of the Commonwealth of Kentucky, Greeting: Sheron Bradley

WHEREAS, I have this day received information on oath from Sheron Bradley that on the 8 day of 10 19 77 in the County of Jefferson Rev Fredda L Mayo was guilty of KRS 202A050 contrary to the statutes in such case made and provided, and against the peace and dignity of the Commonwealth.

You are, therefore, hereby commanded forthwith to arrest the said deft and bring him before the Judge of the Jefferson Quarterly Court, at the Court-room thereof, in the Fiscal Court Building, to answer said charge and be dealt with according to law, and have then and there this writ.

WITNESS: GLENNA B. McCUBBIN, Clerk of said Court this 8 day 10 19 77

GLENNA B. McCUBBIN, C. J. Q. C. K. Deerhaper D. C.

AFFIDAVIT

Sheron Bradley affiant states on oath, that in the County of Jefferson, on the 8 day of 10 19 77 Rev Fredda L Mayo did willfully and unlawfully KRS 202A050: Affiant states deft is mentally incompetent, represents a danger to himself or others and may harm himself or others if not immediately restrained. Affiant states deft is acting extremely violent. Signed Sheron Bradley Georgia M Smith

Subscribed and sworn to before me, this 8 day of 10 19 77

21

JEFFERSON CIRCUIT COURT
SIXTH DIVISION
NO. 78-CI-08262

81 OCT 16 P5:11

EUGENE HANEY, ADMINISTRATOR
OF THE ESTATE OF
FREDDIE LEE MAYES — Plaintiff

vs.

BY JUDICIAL
ADMISSION OF FACT

CITY OF LOUISVILLE, et al. — Defendants.

Attached hereto and incorporated hereby by reference herein is a copy of the Warrant signed by Sharon Bradley, and countersigned by Georgia M. Smith, all on the 8th day of October, 1977, and issued by K. Doerhoefer, Deputy Clerk, Jefferson Quarterly Court, Jefferson County, Kentucky.

The Plaintiff admits that said Warrant was issued on or about October 8, 1977 pursuant to Section 202A.050 of the Kentucky Revised Statutes contained in the chapter entitled "Mental Health Hospitalization Act" and admits that the Affidavit supporting said Warrant was signed by Sharon Bradley and Georgia Smith, and admits that said Warrant commanded the arrest of Reverend Freddie L. Mayes.

Plaintiff further admits that said Warrant came into the possession of Sgt. Gene Waldridge, a defendant in this action, for purposes of the service of the same on Reverend Freddie Lee Mayes, and that Sgt. Gene Waldridge, pursuant to his responsibilities as a duly authorized law enforcement officer of the City of Louisville, Louisville Division of Police, ordered his co-defendants Pike, Kalbfleisch, Nobles and Lankford to execute said Warrant on October 9, 1977 upon Freddie L. Mayes.

AND IT IS SO ADMITTED.

ESTATE OF FREDDIE LEE MAYES

By: /s/_____
COUNSEL FOR PLAINTIFF

By: /s/_____

I hereby certify that a copy of the foregoing was mailed this 16th day of October, 1981, to Mr. Samuel Manly, 3260 1st National Tower, Louisville, KY; Mr. George S. Schuhmann, II, Suite 1234 One Riverfront Plaza, Louisville, Kentucky; and Mr. Paul Guagliardo, City Law Department, 601 West Jefferson St., Louisville, Kentucky.

/s/_____
COUNSEL FOR PLAINTIFF

EXHIBIT E

The Fifth, Fourth, Sixth and Fourteenth Amendments have been construed to forbid the use of deadly force on a fleeing felon who did not use violence in committing the felony and who posed no threat to anyone. As such, the fact that the faulty instructions allowed the jury to find for the defendant-appellees in this case where there was not even a crime that the deceased had committed is a denial of the appellant's federal as well as state rights to due process. See *Landrum v. Moats*, 576 F 2d 1320 (8th Cir., 1978); *Jacobs v. City of Wichita,* 531 F Supp 129 (D. Kan., 1982). Furthermore to treat this sick man while being "arrested" as a criminal is treated to effect his arrest raises much the same problem as is raised in *Robinson v. California*, 370 US 660 (1962) which held unconstitutional a state statute listing narcotics addiction as a crime. At either stage — arrest or conviction — the mentally sick cannot be treated as a criminal.

There is a specific statute directly on point however which gives guidance to the type and manner of force that can be used in the circumstances of a police officer's serving a mental detention warrant in Kentucky. KRS 202 A.200 states:

used in order to avoid civil liability as well. The same can be said for KRS 503.050.

The Fourth, Fifth, Sixth and Fourteenth Amendments have been construed to forbid the use of deadly force on a fleeing felon who did not use violence in committing a felony and who posed no threat to anyone. Hence, the faulty instructions which did not limit the use of force in a case where there was not even a crime that the deceased had committed, is a denial of the decedent's federal due process rights. *See, Landrum v. Moats,* 576 F.2d 1320 (8th Cir., 1978).

But most importantly, *there is a specific statute which gives guidance to the type and manner of force that can be used in serving such a mental detention warrant.* KRS 202 A.200 (now rewritten as KRS 202 A.301). The instruction tendered by the movant incorporated just such a standard. That instruction was refused. The principle is settled that a specific statute controlling a narrow subject matter controls over a general statute affecting the same subject matter. *Hollis v. Kentucky,* Ky., 652 S.W.2d 61 (1983); *Bailey v. Reeves,* Ky., 662 S.W. 832 (1984). This specific statute governs any issue of civil liability which arises within the context of KRS Chapter 202A. Not to have given the requested instruction and to have given the instruction set forth above certainly caused irreparable prejudice to the Movant.

(b) The issue stated in (a) is closely related to the question of whether the Trial Court erred in excluding the . . . .